

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

LAW FIRM OF BRIAN W. HOFMEISTER, LLC

By: Brian W. Hofmeister, Esq.

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Building 5, Suite 110

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(609) 890-6961 - fax

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Attorneys for Debtor

In Re:

KURT M. KUHLMAN

Case No.: 17-10431-KCF

Chapter 11

Judge: Kathryn C. Ferguson

NOTICE OF MOTION SEEKING ENTRY OF AN ORDER APPROVING THE SALE OF CERTAIN REAL PROPERTY LOCATED AT 107 AKINS ROAD, BERKSHIRE, NEW YORK, FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §§ 105(a), 323(a), AND 363(b), (f), (h) and (m) and 541(a); WAIVING THE FOURTEEN (14) DAY STAY PROVIDED BY FED. R. BANKR. P. 6004; AND GRANTING RELATED RELIEF

United States Trustee's Office
One Newark Center
Suite 2100
Newark, NJ 07102

Bank of America Home Loan
450 American Street
Simi Valley, CA 93065

Bank of America Home Loans
PO Box 5170
Simi Valley, CA 93062-5170

Dan Brownell
6 Bridle Path
Southampton, NJ 08088

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

Lisa Umbeaver
3 Gate Road
Tabernacle, NJ 08088

Lomurro, Davison, Eastman & Munoz, P.A.
Monmouth Executive Center
100 Willow Brook Road
Building 1
Freehold, NJ 07728

Lomurro, Davison, Eastman & Munoz, P.A.
4 Paragon Way
Suite 100
Freehold, NJ 07728

Robin Winzinger
1705 Mames Hwy
Hainesport, NJ 08036

Sally Volpe
315 Engleside Ave.
Beach Haven, NJ 08008

Seterus
14523 SW Millikann Way #200
Beaverton, OR 97005

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1 Eldorado Drive
Tabernacle, NJ 08088

Carrie Boyle, Esq.
McDowell Posternoch Apell & Detrick
46 West Main Street
Maple Shade, NJ 08052

PLEASE TAKE NOTICE that the undersigned, attorneys for the Debtor, Kurt Kuhlman ("Debtor") herein, shall appear before the Honorable Kathryn C. Ferguson, Judge, United States Bankruptcy Court, 402 East State Street, Trenton, New Jersey, on the 18th day of July, 2017 at 10:00 in the forenoon, or as soon thereafter as counsel may be heard and shall apply for an Order Approving the Sale of Certain Real Property at 107 Akins Road, Berkshire, New York, Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105(a), 323(a), and 363(b), (f), (h) and (m) and 541(a); Waiving the Fourteen (14) Day Stay Provided by Fed. R. Bankr. P. 6004; and Granting Related Relief.

YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and

discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one).

PLEASE TAKE FURTHER NOTICE that, if you do not want the Court to enter an Order, or if you want the Court to consider your views on this Motion, then on or before July 11, 2017, you or your attorney must:

File, with the Court, a written objection to this Motion, explaining your position to the Clerk, United States Bankruptcy Court, 402 East State Street, Trenton, New Jersey 08608;

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before July 11, 2017. You must also serve a copy upon Brian W. Hofmeister, Esq., Law Firm of Brian W. Hofmeister, LLC, 3131 Princeton Pike, Building 5, Suite 110, Lawrenceville, New Jersey 08648; and

You must attend the hearing scheduled to be held on July 18, 2017 at 10:00 a.m. at 402 East State Street, Trenton, New Jersey.

PLEASE TAKE FURTHER NOTICE that if you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in this Motion and may enter an order granting the relief requested.

PLEASE TAKE FURTHER NOTICE that the undersigned shall rely upon the annexed Application. In addition, if objections are submitted, the undersigned will be appearing for oral argument at the hearing.

PLEASE TAKE FURTHER NOTICE that the within Motion requests that the Court enter an Approving the Sale of Certain Real Property at 107 Akins Road, Berkshire, New York, Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105(a), 323(a), and 363(b), (f), (h) and (m) and 541(a); Waiving the Fourteen (14) Day Stay Provided by Fed. R. Bankr. P. 6004; and Granting Related Relief, and said Motion is based largely on the facts as outlined in the

Application in support of the within Motion and the Application submitted herewith.

LAW FIRM OF BRIAN W. HOFMEISTER, LLC
Attorneys for Kurt Kuhlman

BY: */s/Brian W. Hofmeister*

Dated: June 14, 2017

Brian W. Hofmeister

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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Attorneys for Debtor

In Re:

KURT M. KUHLMAN

Case No.: 17-10431-KCF

Chapter 11

Judge: Kathryn C. Ferguson

**APPLICATION IN SUPPORT OF MOTION SEEKING ENTRY OF AN ORDER APPROVING
THE SALE OF CERTAIN REAL PROPERTY LOCATED AT 107 AKINS ROAD,
BERKSHIRE, NEW YORK, FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS
AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §§ 105(a), 323(a), AND 363(b), (f), (h) and
(m) and 541(a); WAIVING THE FOURTEEN (14) DAY STAY PROVIDED BY FED. R.
BANKR. P. 6004; AND GRANTING RELATED RELIEF**

TO: THE HONORABLE KATHRYN C. FERGUSON
UNITED STATES BANKRUPTCY JUDGE

Kurt Kuhlman (the “Debtor”), by and through his counsel, Law Firm of Brian W. Hofmeister, LLC, hereby files this Application (the “Application”) in support of his Motion (the “Motion”) for entry of an Order Approving the Sale of Certain Real Property located at 107 Akins Road, Berkshire, New York, Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105(a), 323(a), and 363(b), (f), (h) and (m) and 541(a); Waiving the Fourteen (14) Day Stay Provided by Fed. R. Bankr. P. 6004; and Granting Related Relief. In support of the Motion, the Trustee respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§157 and 1334. This is a core proceeding under 28 U.S.C. §157(b).

2. Venue of this case and the Motion in this judicial District is proper under 28 U.S.C. §§1408 and 1409.

3. The statutory bases for the relief sought by the Motion are Sections 105(a), 323(a), 363(b), (f), (h) and (m) and 541(a) of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.

BACKGROUND

4. On January 9, 2017 (the “Filing Date”), the Debtor filed his voluntary petition for relief under Chapter 11, Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”).

5. Since the Filing Date, the Debtor has remained in possession of his assets as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

6. No request has been made for the appointment of a Trustee or examiner, and no statutory committee or trustee has been appointed in this case.

7. One of the significant asset of the Debtor’s estate consists of his ownership interest in real property located at 107 Akins Road, Berkshire, New York 13736 (the “Property”).

The Secured Debt:

8. On Schedule D of the Debtor’s Petition, the Debtor lists Bank of America Home Loans (“BOA”) as having a secured claim in the amount of approximately \$50,000.00.

The Sale Process

9. On May 3, 2017, this Court entered an Order authorizing the retention of NY Land Quest, LLC to assist the Debtor in marketing and selling the Property.

10. After marketing the Property, the Debtor’s realtor garnered an offer from the Buyer to purchase the Property.

11. The Debtor engaged in arms length negotiations with the Buyer pursuant to which the Debtor agreed to sell the Property to the Buyer for \$174,000.00 pursuant to the terms of the proposed Agreement of Sale (the "Agreement of Sale"). A true and correct copy of the Agreement of Sale is attached hereto as Exhibit "A".

12. Despite the best efforts by the Debtor to assist in the marketing and sale of the Property, the Buyer has been the only party to be forthcoming with a firm offer despite showings to other prospective buyers.

13. After carefully evaluating the Buyer's offer and the potential for additional offers, the Debtor has determined that the price offered by the Buyer is the highest and best price the Debtor can obtain for the Property under the circumstances.

Agreement of Sale

14. The salient terms of the Agreement of Sale can be summarized as follows:¹

- The Parties: The seller under the Agreement of Sale is Kurt Kuhlman. The purchaser is Mark Johnson.
- The Property: The land together with the buildings, structures and improvements thereon and the appurtenances thereto, situated at Tax map ID# part of 31.00-1-19.11 on the Tax Map for the Town of Berkshire, County of Tioga and State of New York and more commonly known as 107 Akins Road, Berkshire, New York.
- The Purchase Price: The total consideration for the sale of the Property is \$174,000.00.
- The Deposit: The sum of \$1,000.00 was paid by the Buyer, which shall be held by the Buyer's attorney.
- "As Is, Where Is": The Buyer agrees to accept the Property in its "as is" condition. The Debtor makes no representations or warranties whatsoever.
- Bankruptcy Court Approval: The sale of the estate's interest in the Property is subject to Bankruptcy Court approval.

¹This summary is qualified in its entirety by the Agreement of Sale and is intended solely to give the Bankruptcy Court and interested parties a brief overview of the significant terms of the Agreement of Sale. Interested parties should refer to the Agreement of Sale for the complete and detailed terms thereof.

Breakdown of Sale Proceeds

15. The breakdown of sale proceeds will be as follows:

(a)	Sale Price	\$174,000.00
(b)	Real Estate Broker's Commission	<u>\$ 12,180.00</u>
(c)	Subtotal	\$161,820.00
(d)	Less mortgage	<u>\$ 50,000.00</u>

Net Proceeds to the Estate (estimated²) \$111,820.00

Notice of Sale

16. A notice of the private sale is being sent by the Clerk of the Bankruptcy Court, as to generate a court notice to all creditors. In addition, service will be effectuated on persons knowingly expressing an interest in the Property to the broker or who have filed a notice of appearance, in anticipation of receiving the highest and best offer.

Higher and Better Offers

17. The Debtor will accept all higher and better offers on the estate's interest in the Property up to and including the hearing date. All bidders must have certified funds on the hearing date in order to bid.

RELIEF REQUESTED AND REASONS THEREFOR

18. The Debtor is seeking this Court's approval solely to sell the Property to the Buyer, free and clear of any liens, claims, interests and encumbrances (the "Sale") pursuant to Sections 105(a) and 363(b), (f), (h) and (m) of the Bankruptcy Code.

I. The Sale of the Estate's Interest in the Property is in Good Faith and is a Proper Exercise of the Debtor's Business Judgment

19. Section 363(b)(1) of the Bankruptcy Code provides that a debtor "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . ." 11 U.S.C. §363(b)(1); See also Fed. R. Bankr. P. 604(f)(1) (authorizing sales outside the ordinary course

²This estimated net recovery is subject to any additional closing costs/adjustments.

of business to be conducted privately or by public auction).

20 . Section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor's assets. However, courts in the Third Circuit have found that a sale of an estate's assets should be authorized pursuant to Section 363 of the Bankruptcy Code if a sound business judgment exists for such a sale. See Myers v. Martin (In re Martin), 91 F. 3d 389, 395 (3rd Cir. 1996); In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1990); In re Del. & Hudson Ry. Co., 124 B.R. 169, 175-76 (D. Del. 1991) (applying the "sound business purpose test" set forth in Comm. Of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F. 2d 1063, 1071 (2nd Cir. 1983)).

21 . Courts typically consider the following four factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business judgment justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. In re Weatherly Frozen Food Group, Inc., 149 B.R. 480, 483 (Bankr. N.D. Ohio 1992); Del & Hudson Ry, 124 B.R. 176; In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1987); In re Titusville Country Club, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991).

22. In this case, all of those factors have been met.

A. Sound Business Justification for the Sale

23. Courts have made clear that a trustee's showing of a sound business justification does not have to be unduly exhaustive. Rather, a debtor or trustee is "simply required to justify the proposed disposition with sound business reason" In re Baldwin United Corp., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Moreover, the paramount goal in any proposed sale of property of the estate is to maximize the value received by the estate. See In re Food Barn Stores, Inc., 107 F.3d at 564-65 (8th Cir. 1997) (stating that in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate

at hand”); In re Integrated Res., Inc., 147 B.R. 650, 659 (S.D.N.Y. 1992) (“It is well-established principle of bankruptcy law that the . . . [debtors’] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) (quoting In re Atlanta Packaging Prods., Inc., 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)).

24. There is more than adequate business justification to sell the Property. Based upon an analysis of the Debtor’s professionals, the sale of the Property to the Buyer, pursuant to the terms and conditions set forth in the Agreement of Sale, is in the best interest of the estate.

25. Without any other potential buyers, it is unlikely the estate would receive any benefit from further attempts to market and sell the Property.

26. Accordingly, as set forth herein, the proposed sale is supported by sound business judgment.

B. The Debtor is Providing Adequate Notice of the Sale

27. In accordance with Bankruptcy Rule 6004, sales of property outside the ordinary course of business may be by private sale or public auction. Fed. R. Bankr. P. 6004(f)(1). Bankruptcy Rule 6004 further provides that “[n]otice of a proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c)(1), (i) and (k) and, if applicable, in accordance with [section] 363(b)(2) of the Code.” Fed. R. Bankr. P. 6004(a).

28. In this case, the notice provision has been met because all parties in interest in the Debtor’s bankruptcy case are receiving notice of the proposed sale. Additionally, a notice of the sale is being sent by the Clerk of the Bankruptcy Court so as to provide notice to creditors. In addition, service will be sent to those parties who have expressed an interest in the Property or who have filed a notice of appearance.

C. The Property is Being Sold for Fair Value

29. The Debtor is receiving the best possible price for the estate’s interest in the Property, because the sale price is the highest offer that the Debtor has received on the Property. The proposed sale of the Property is also subject to higher and better offers and any potential bidders are invited to attend the

hearing on the Motion.

D. Good Faith Buyer Requirement

30. Finally, the parties here are acting in good faith and, therefore, the protections of Section 363(m) of the Bankruptcy Code should apply to the Buyer.

31. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11. U.S.C. §363(m). While the Bankruptcy Code does not define “good faith,” the Third Circuit has construed the “good faith buyer” standard to mean one who purchases “in good faith” and for “value”. Court has indicated that a party must show fraud or collusion between the purchaser and the debtor or trustee in order to demonstrate a lack of good faith. Abbotts Dairies, 788 F. 2d at 147.

32. Here, there has been no collusion between the Buyer and the Debtor. Additionally, through and until the hearing on this Motion, the Debtor will consider all higher and better offers for the Property.

33. In light of the open sale process, nothing here suggest any fraud or collusion. Accordingly, the Debtor respectfully requests that this Court make a finding that the Buyer is a “good faith purchaser” pursuant to Section 363(m) of the Bankruptcy Code.

11. The Debtor Should be Able to Sell the Property “Free and Clear” Pursuant to Subsection 363(f)

34. The Debtor should be able to sell the Property free and clear of all liens, claims, interest and encumbrances because the requirements of Section 363(f) of the Bankruptcy Code have been satisfied. In accordance with Section 363(f) of the Bankruptcy Code, a trustee may sell property under Section 363(b) “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied:

- (i) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (ii) such entity consents;
- (iii) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (iv) such interest is in *bona fide* dispute; and
- (v) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. §363(f). Because Section 363(f) of the Bankruptcy Code is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to warrant approval of the proposed sale of the Property. Folger Adam Sec., Inc. v. DeMatteis/MacGregor, JV, 209 F. 3d 252, 257 (3rd Cir. 2000) (discussing how Section 363(f) of the Bankruptcy Code authorizes the sale of a debtor's assets free and clear of all liens, claims and interests if "any one of [the] five prescribed conditions" is met); In re Kelistrom Indus., Inc., 282 B.R. 787,793 (Bankr. D. Del. 2002) (stating that a court may approve a sale "free and clear" provided at least one of the subsections of Section 363(f) is met); see also DVI, Inc., 306 B.R. 496, 503 (Bankr. D. Del. 2004).

35. Here, the sale price is greater than the aggregate amount of any liens on the Property. As such, the requirements of subsection 363(f) have been satisfied and the sale of the estate's interest in the Property free and clear of all liens, claims and interests, with all valid liens, claims and interests, if any, to attach to the proceeds of the sale.

36. Based upon the foregoing, the Debtor requests this Court permit the sale process to move forward.

III. Pursuant to Section 105 of the Bankruptcy Code the Equities Weigh in Favor of Approving the Terms of the Agreement

37. The relief sought herein is also appropriate pursuant to this Court's equitable powers under Section 105(a) of the Bankruptcy Code. It is well settled that bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the administration of

bankruptcy proceedings. See In re Official Comm. of Unsecured Creditors of Cybergenics Corp., 330 F. 3d 548, 567 (3rd Cir. 2003); Pepper v. Litton, 308 U.S. 295, 304 (1939); In re Carlton, 72 B.R. 543, 547 (Bankr. E.D.N.Y. 1987) (Duberstein, Former Ch. J.). Section 105(a) states that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. §105(a); See also Law v. Siegel, 134 S. Ct. 1188, 1194, 188 L. Ed. 2d 146 (2014) (“Section 105(a) confers authority to ‘carry out’ the provisions of the [Bankruptcy] Code . . .”).

38. As courts commonly acknowledge, Section 105 of the Bankruptcy Code confers broad powers on bankruptcy courts:

[Section] 105 [is] an omnibus provision phrased in such general terms as to be the basis for a broad exercise of power in the administration of a bankruptcy case. The basic purpose of [section] 105 is to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of is jurisdiction

Davis v. Davis (In re Davis), 170 F. 3d 475, 492 (5th Cir. 1999) (internal citations and quotations omitted); see also In re Kaiser Aluminum Corp., 456 F. 3d 328, 340 (3rd Cir. 2006). Under Section 105(a) of the Bankruptcy Code, this Court has expansive power to fashion any order or decree that is in the interest of preserving or protecting the value of the debtor’s estate. See Coie v. Sadkin, (In re Sadkin), 36 F. 3d 473, 478 (5th Cir. 1994).

39. Here, the sale of the Property has been judicially secured by the efforts of the Debtor and his professionals and will allow the Debtor to fulfill his duties under the Bankruptcy Code.

40. Furthermore, allowing the sale should provide for a possible distribution to the creditors of the estate.

WAIVER OF OF FOURTEEN DAY STAY UNDER BANKRUPTCY RULE 6004(h)

41. Pursuant to Bankruptcy Rule 6004(h), unless the court orders otherwise, all orders authorizing the sale of property pursuant to Section 363 of the Bankruptcy Code are automatically stayed for fourteen days after entry of such order, “unless the court orders otherwise.” See Fed. R. Bankr. P.

6004(h).

42. Waiving the fourteen day stay under Bankruptcy Rule 6004(h) is necessary to permit the Debtor to minimize these costs by closing the proposed Sale Transaction as soon as possible after the entry of the Sale Order.

NOTICE

43. Notice of the Motion has been given to: (1) the United States Trustee for the District of New Jersey; (2) the Buyer; (3) all parties that timely have requested notice in this case; and (4) any parties that have knowing expressed interest in the Property. In addition, the Debtor filed a Notice of Private Sale, which helped to generate further notice by the Clerk of the Bankruptcy Court.

NO PRIOR REQUEST

44. No previous motion for the relief sought herein has been made to this or to any other court.

WAIVER OF BRIEF

45. As no novel issue of law is raised and the relevant authorities relied upon by the Debtor are set forth herein, the Debtor respectfully requests that the requirements of D.N.J. LBR 9013-2 of filing a brief be waived.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that this Court enter an order directing granting the relief sought herein; and grant such other, further and different relief as this Court deems just, proper and equitable.

LAW FIRM OF BRIAN W. HOFMEISTER, LLC
Attorneys for Kurt Kuhlman

By: /s/Brian W. Hofmeister
Brian W. Hofmeister

Dated: June 15, 2017

EXHIBIT "A"



CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE

(Approved by the Cortland County Board of REALTORS® Inc.)

THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, WE RECOMMEND ALL PARTIES TO THE CONTRACT CONSULT ANY ATTORNEY BEFORE SIGNING.



MLS# _____

IDENTIFICATION OF PARTIES TO THE CONTRACT

SELLER: Kurt Kuhlman

("Seller" refers to each and all parties who have an ownership interest in the property).

Address: 107 Akins Road, Berkshire NY 13736 Contact number _____

BUYER: _____ ("Buyer"

refers to each and all of those who sign below as Buyer)

Address: 510 Harbor Road, Newark Valley NY 13821 Contact number _____

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. PREMISES: Seller shall sell and convey and Buyer shall purchase the property, together with all buildings and improvement thereon, known as 107 Akins Road located in the _____ of Berkshire in Tioga County, State of New York. This property includes all the Seller's rights and privileges, if any, to all land, water, streets and roads annexed to, and on all sides of, the property. The lot size of the property is approximately 47 acres. Tax map ID# part of 31.00-1-19,11

2. ITEMS INCLUDED IN THE SALE

- | | | |
|--------------------------------------|--|---------------------------------------|
| Heating and Lighting Fixtures | Storm Windows and Screens | Hot Water Heater |
| Built-in Kitchen Appliances | Storm and Screen Doors | Television Aerials |
| Built-in Bathroom & Kitchen Cabinets | Water Softeners (if owned by seller) | Smoke Detectors |
| Drapery Rods and Curtain Rods | Plumbing Fixtures | Alarm Systems |
| Shades and Blinds | Pumps | Shrubbery, Trees and Plants |
| Wall to Wall Carpeting as placed | Awnings | Fencing in the Ground |
| Carbon Monoxide Detector | Pool & related Pool Equipment & Supplies | Fireplace insert, doors and/or screen |
- The items listed above, if now in or on said premises are represented to be owned by the Seller, free from all liens and encumbrances, and are included in the sale "as is" on the date of this offer, together with the following items: _____

3. ITEMS EXCLUDED FROM SALE: The following items are excluded from the sale: _____

4. PURCHASE PRICE The Purchase price is One Hundred Seventy-Four Thousand DOLLARS (174,000.00)

The Buyer shall pay the purchase price as follows:

- a. 1,000.00 Deposit with this contract
- b. _____ Additional deposit on _____
- c. 173,000.00 In cash or certified check at closing
- d. _____ Assumption of existing mortgage loan/or seller financing as set forth in addendum
- e. _____ Mortgage amount due at closing
- f. 174,000.00 TOTAL

5. FINANCING - _____ balance by Buyer obtaining, at his cost and expense, a VA Mortgage mortgage loan for a term of not more than 30 years and an interest rate not to exceed 5%. Buyer shall make good faith application for this mortgage within 7 days of the acceptance of this Contract by Seller. Buyer shall provide Seller with evidence of written approval of this mortgage, or reasonably satisfactory proof of financial ability to close, by 05/31/2017 (the "Mortgage Commitment Deadline") or Seller may cancel this Contract at Seller's option by written notice as provided for herein. Buyer authorizes the Lending Institution and/or Mortgage Broker to provide a copy of written mortgage commitment with pre-closing conditions to the listing agent and selling agent as set forth in this contract.

6. OTHER TERMS (if any)

Buyer initial ([Signature])

Seller initial ([Signature])

7. TITLES AND SURVEY - Seller is to furnish: Warranty Deed with lien covenant, or executor's or administrator's deed to the premises; SURVEY, certified, dated and property pinned and flagged. after the date of this contract; city, county and school tax searches; and up-to-date abstract of title prepared by a title abstract Company authorized to do business in New York State, covering a least 40 years and commencing with a "Warranty Deed" showing good and marketable title, free of liens and encumbrances, except restrictions running with the land common to the tract or subdivision, common driveways, Indian land claims if any and all rights of way and easements theretofore granted to Public Utility Corporations and the following restrictions: _____

8. CONDITIONS OF PREMISES - Except as to properties subject to the provisions of Article 36-B of the General Business Law, the (Warranties on the Sales of New Homes), buildings on the premises are sold "as is" without warranty as to condition, and the Buyer agrees to take title to premises "as is" and in their present condition, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the closing of title. The Seller assumes the risk of loss or damage to the premises by fire or other causes until delivery of the deed. Seller agrees that at the time of transfer of title, the property will be broom clean and free of all personal property not part of this contract.

9. CONDITIONS AFFECTING TITLE - The Seller shall convey and the Buyer shall accept the property subject to all covenants, conditions, restrictions and easements of record and zoning and environmental protection laws so long as the property is not in violation thereof and so long as any of the foregoing does not prevent the intended use of the property for the purpose of Primary Residence. The premises are conveyed subject to the rights of existing tenants, if any. The Seller represents that there are presently unpaid assessments for local improvements in the amount of NA payable at _____, which per year shall be prorated as of the date of transfer of title based on the fiscal year for which assessed.

10. TAX AND OTHER ADJUSTMENTS - The following, if any, shall be apportioned so that Buyer and Seller are assuming the expenses of the property and income from the property as of the date of transfer of title:

- a. Rents and security deposits. Seller shall assign to Buyer all written leases and security deposits affecting the premises. All rents will be treated as paid through the end of the rental payment period (e.g., semester or month).
- b. Taxes, sewer, water rents, and condominium and homeowner association fees.
- c. Municipal assessment yearly installments, except as set forth in item 9.
- d. Fuel in storage based upon the fair market value at the time of closing as confirmed by certification provided by Seller's supplier.

11. RIGHT OF INSPECTION AND ACCESS - Buyer and/or buyer's representative shall be given access to the property for any tests or inspections required by the terms of this Contract upon reasonable notice to Seller or Seller's representative. Buyer, and/or Buyer's representative, shall be given the right of inspection of the property, at a reasonable hour, within 48 hours prior to transfer of title.

12. TRANSFER OF TITLE/POSSESSION - The transfer of title to the property from Seller to Buyer will take place at the office of the lender's attorney, if the Buyer obtains a mortgage loan from a lending institution. Otherwise, the closing will be at the office of the attorney for the Seller.

The closing will be on or about 06/30/2017 or as soon thereafter as the deed and abstract can be delivered. Possession shall be granted upon the transfer of title unless otherwise mutually agreed upon in writing signed by the parties.

13. DEPOSITS - It is agreed that any deposits by the Buyer's are to be deposited with the Selling Broker at Tompkins Trust Company as part of the purchase price. If the Seller does not accept the Buyer's offer, all deposits shall be returned to Buyer. If the Seller accepts the offer, the Selling Broker will hold all deposits in escrow until the contingencies and terms herein have been met. The Buyer will receive credit on the total amount of the deposit toward the purchase price. Broker shall then apply the total deposit to the brokerage fee. Any excess deposit over and above the fee earned will go to the Seller. If following a good faith application by Buyer, this mortgage cannot be obtained as evidenced by a denial letter from a lender which regularly makes residential mortgage loans in the county where the premises are located, this Contract may be terminated by either party and the deposit returned to the Buyer, except that Buyer agrees to pay the Seller the actual costs incurred by Seller in obtaining the Abstract of Title, survey and tax searches, not to exceed \$500.00, which costs may be deducted from the deposit. If the property subject to this agreement does not appraise at a value sufficient to the lender, or the Seller is unable to provide marketable title, this contract may be terminated by the Buyer, at no fault to the Buyer, and the entire deposit held by the Selling Broker shall be returned to the Buyer.

14. EXPIRATION OF OFFER - Execution of this document by the Buyer, unless earlier withdrawn, shall constitute an offer and will become the contract upon acceptance by the Seller. This offer shall remain open until 5:00 a.m. p.m. 05/03/2017 If the Seller does not accept same by said date, the offer shall be null and void and the deposit shall be returned to Buyer.

15. REAL ESTATE BROKER - The Buyer and Seller agree that _____ and Jimmie Hinkle brought about the sale, and Seller agrees to pay the Broker's commission to _____ and NY Land Quest, LLC as agreed in the listing agreement.

Check here if buyer or seller is paying any additional compensation to any of the brokers in this transaction.

16. ATTORNEY'S APPROVAL CLAUSE

This Contract is contingent upon approval by Buyer's and Seller's attorney within 3 business days from acceptance as to all terms except the Purchase Price described in Section 4. Failure to provide either the Listing Agent, Selling Agent Attorney for the other party in writing, or the other party with an Attorney's disapproval of this Contract within 3 business days shall be deemed to constitute approval of the terms of the Contract by the Attorney for the party who does not respond within such time frame. If Buyer or Seller's attorney so notifies, then this Contract shall be deemed cancelled, null and void, and all deposits shall be returned to the Buyer.

Buyer's Attorney (name)

Buyer Initial ([Signature])

Seller's Attorney (name)

Seller Initial ([Signature])

17. ADDENDA

The following attached addenda are part of this Contract (as may be required by the Real Property Law of the State New York and by Federal regulation):

- A. Property Condition Disclosure Statement B. Disclosure Regarding Real Estate Agency Relationships
 C. Disclosure of Information and Acknowledgement of Lead-Based Paint and/or Lead-Based Paint Hazards D. Uncapped Natural Gas Well E. Agricultural District F. Deed & Survey If Available G. Oil & Gas Lease
 Other: _____

OTHER ADDENDA

(Place an "X" for applicable contingency)

- | | | |
|---|---|--|
| <input type="checkbox"/> A) Home Inspection | <input checked="" type="checkbox"/> F) FHA/VA Mortgage | <input type="checkbox"/> K) Utility/Electric |
| <input type="checkbox"/> B) Radon Inspection | <input type="checkbox"/> G) FHA Property Repair | <input type="checkbox"/> L) Government Approvals |
| <input type="checkbox"/> C) Water Test | <input type="checkbox"/> H) Agriculture | <input type="checkbox"/> |
| <input type="checkbox"/> D) Septic Test | <input type="checkbox"/> I) Sale of Buyer's Home | _____ |
| <input type="checkbox"/> E) Seller Concession | <input type="checkbox"/> J) Transfer of Title of Buyer's Property | _____ |

18. HOME INSPECTION AND RADON TESTS:

Buyer elects to have a home inspection Yes No MM initials
 If "yes" refer to Addendum "A"
 If "no" buyer waives right to a home inspection
 Buyer elects to have a radon test Yes No MM initials
 If yes, refer to Addendum "B"
 If no, buyer waives buyer's right to a radon test

19. NOTICES

All notices contemplated by this Contract shall be in writing, delivered by certified or registered mail, return receipt requested, postmarked no later than the required date, or by personal service by such date.

20. HOME EQUITY THEFT PREVENTION ACT.

A. Purchaser intends does not intend to use the premises as purchaser's primary residence.
 B. If purchaser DOES NOT intend to use the premises as purchaser's primary residence, then seller represents that premises is is not in foreclosure (lis pendens filed or property is on active tax lien sale list) OR that seller is is not in default for two or more months on seller's mortgage payments and the contract includes a reconveyance arrangement.
 If the premises is not to be used as purchaser's primary residence AND if the seller is in foreclosure OR in default on the mortgage payments for two or more months and there is a reconveyance arrangement, then the HOME EQUITY THEFT PREVENTION ACT ADDENDUM is to be executed by the parties hereto, which addendum shall be made a part of this contract as if the same were to be set forth herein at length.

21. ENTIRE CONTRACT

This Contract contains all agreements of the parties hereto. There are no promises, agreements, terms, conditions, warranties, representations or statements other than contained herein. This Contract shall apply to and bind the heirs, legal representatives, successors and assigns of the respective parties. It may not be changed orally.

<u>[Signature]</u> SELLER Kurt Kuhlman	Date: <u>4/23/17</u>	Time: _____
<u>[Signature]</u> SELLER	Date: <u>4/23/17</u>	Time: _____
<u>[Signature]</u> BUYER	Date: _____	Time: _____
<u>[Signature]</u> BUYER	Date: _____	Time: _____

DISCLAIMER: The Buyer acknowledges that the real estate agents involved in this transaction are not qualified to determine the condition of the property, its fitness for a particular purpose or the uses to which it can be put. It is recommended that the Buyer rely on Licensed Home Inspector, licensed contractor or other qualified parties for opinions about the property's condition. It is further recommended that the Buyer hire an attorney for legal advice including advice about the property's uses, the need for a survey, and whether or not the Seller has good title to the property.

WITNESSED BY:
 Listing Broker/Agent: Jimmie Hinkle Phone/Fax: 607-342-8650 607-844-9616 License#: 10401294748
 Cooperating Broker/Ag: _____ Phone/Fax: 607-345-5031 License#: _____
 Listing Brokerage Name: NY Land Quest, LLC License#: 109941109 Cooperating Brokerage Name: _____
 License#: _____

PURCHASE CONTRACT ADDENDA

(APPROVED BY THE CORTLAND COUNTY BOARD OF REALTORS®, Inc.)

THIS IS A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, WE RECOMMEND ALL PARTIES TO THE CONTRACT CONSULT AN ATTORNEY BEFORE SIGNING.

Seller and Buyer must initial the applicable contingencies to this Contract
ADDENDUM TO CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE BETWEEN:

Kurt Kuhlman

SELLER:

BUYER:

Regarding Property located at: 107 Akins Road Berkshire

[Handwritten initials]

Buyer

[Handwritten initials]
 Seller

A) HOME INSPECTION CONTINGENCY

This Contract is contingent upon the Buyer obtaining, at Buyer's expense, a written determination by a New York State registered architect, licensed engineer or a duly licensed home inspector, within 20 days after acceptance, exclusive of that date, that the premises are free from any substantial structural, mechanical, electrical, plumbing, roof covering or sewer defects. Should the Buyer not obtain written determination within said period, this contingency is waived. Seller agrees to cooperate with buyer to provide all necessary access to the Premises for the timely completion of the Home Inspection. Any individual defect costing more than \$500.00 to correct shall be considered substantial within the terms of this contingency. In the event of a claim of a substantial defect(s) by Buyer as a result of such inspection, upon request of the Seller, Buyer shall forward to Seller a written copy of the inspection report within two (2) business days of seller's request. Thereafter, either party may terminate this Contract unless the parties agree, by separate written addendum within 5 business days of seller's receipt of notice of substantial defects agree that:

1. Prior to closing, the Seller shall correct the named defects in a good and workmanlike manner, or
2. The Seller shall give Buyer an agreed upon credit at closing, or
3. The Buyer waives any claim of a substantial defect.

B) RADON INSPECTION CONTINGENCY

This Contract is contingent upon Buyer obtaining, at Buyer's expense, a radon inspection, within _____ days after acceptance, exclusive of that date. If requested, the Buyer shall provide the Seller with a copy of such results. Seller agrees to cooperate with Buyer to provide all necessary access to the Premises for the timely completion of the radon test. Seller shall not disrupt or disturb the testing in any manner and will maintain a closed house condition. If the radon test indicates a level of 4.0 picocuries per liter (pCi/L) or higher (the EPA Standard), either party may terminate this Contract unless the parties agree otherwise, by separate written addendum.

Buyer

Seller

C) WELL WATER FLOW AND/OR QUALITY TESTS

This Contract is contingent upon Buyer obtaining,
(Please Initial)

1. A potability water quality test to meet the standards of the New York State Department of Health to be performed by a New York State approved laboratory. Buyer's Expense Seller's Expense
2. Any chemical, metal, inorganic, or other tests as the Buyer/Seller or Buyer's lending institutions may request, Buyer's Expense Seller's Expense and
3. A flow test to be performed indicating a minimum flow of sufficient quantity to
(Strike One): (a) Obtain mortgage financing on the property or/ Buyer's Expense Seller's Expense
 (b) To produce an acceptable flow rate of 3-5 gallons per minute for 1 hour. Buyer's Expense Seller's Expense

Buyer

Seller

These tests are to be completed on or before _____

D) SEPTIC SYSTEM CONTINGENCY

This Contract is contingent upon Buyer obtaining a test of the septic system
(Please Initial)

1. Pump and certification Buyer's Expense Seller's Expense or
2. Dye test Buyer's Expense Seller's Expense on the subject property, indicating that the system is in working order, by a licensed professional engineer, licensed plumber, septic system contractor, County Health Department, or other qualified person to be completed on or before _____

Buyer

Seller

[Signature]
 Buyer
[Signature]
 Seller

E) SELLER CONCESSIONS

- 1. Prepaid Points: The Seller, on the date of transfer, agrees to pay a portion of the Buyer's pre-paid expenses and/or points and/or closing costs associated with FHA mortgage financing up to an amount of _____.
- 2. Closing Costs: The Seller, on date of transfer, agrees to pay a portion of the Buyer's closing costs, excluding pre-payables for SONYMA OR PMI mortgage financing, up to an amount of _____.
- 3. Closing Costs/Points: The Seller, on date of transfer, agrees to pay a portion of the Buyer's closing costs, including pre-payable and points associated with conventional or VA mortgage financing, up to the amount of \$9000.00.

[Signature]
 Buyer
[Signature]
 Seller

F) FHA OR VA MORTGAGE CONTINGENCY

"It is expressly agreed that notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise, unless the purchaser has been given, in accordance with HUD/FHA or VA requirements, a written statement by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender setting forth the appraised value of the property of not less than \$174,000.00. The purchaser shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or condition of the property. The purchaser should satisfy himself/herself that the price and condition of the property are acceptable."

Buyer

 Seller

G) FHA PROPERTY REPAIR

If Buyer's lender or the FHA requires repairs to the premises prior to closing, it is agreed that the Seller shall pay _____% of said repairs and Buyer shall pay _____% of said repairs. If the cost of the total repairs exceed _____, then _____ may terminate this Contract and the deposit shall be returned to the Buyer. Any re-inspection fee shall be paid by: Seller Buyer Split evenly by Seller and Buyer.

[Signature]
 Buyer
[Signature]
 Seller

H) NEW YORK STATE AGRICULTURAL AND MARKET LAW Section 310: Disclosure Prior to the Sale of Real Property. "It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This disclosure notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors. Prospective residents are also informed that the location of property within an agricultural district may impact the ability to access water and/or sewer services for such property under certain circumstances. Prospective purchasers are urged to contact the New York State Department of Agriculture and Markets to obtain additional information or clarification regarding their rights and obligations under article 25-AA of the Agriculture and Markets Law."

Buyer

 Seller

I.) SALE OF BUYER'S PROPERTY

This Contract of is contingent upon Buyer entering into a binding contract of sale on or before _____ for the sale of Buyer's residence at _____. It is understood and agreed that the Seller's property is to remain on the market throughout the term of this contingency. If the Seller, prior to such date, receives an acceptable bona fide written offer for the premises which are the subject of this Contract and which offer is not contingent upon the sale of that buyer's home, then Buyer shall have _____ business days after receipt of written notice from Seller of such offer in which to remove this contingency. This contingency may be removed by Buyer only upon written notice to Seller, and only upon Buyer having provided Seller with documentation that:

- 1. The requirements of this contingency have been fulfilled; or
- 2. Buyer has verified funds sufficient to close without selling his present home and without obtaining a mortgage commitment; or
- 3. Buyer's lender, as a condition of granting the commitment being applied for, will not require the sale of Buyer's property shown above, nor the discharge of any mortgage covering the same, and Buyer shall submit evidence of verified funds sufficient to close.

If Buyer does not remove this contingency within _____ business days of receipt of Seller's notice this Contract shall be deemed cancelled, null and void, neither party shall have any claim against the other and the money deposited under the Contract of sale shall be promptly returned to Buyer.

Buyer

 Seller

J) TRANSFER OF TITLE OF BUYER'S PROPERTY

This Contract is contingent upon to transfer of title, pursuant to an existing contract, of Buyer's real property located at _____ on or before _____. Upon such transfer of title Buyer will notify Seller through _____, in writing. In event that the said transfer of title does not timely occur, Buyer shall immediately notify the Seller through said real estate agent, and Buyer's deposit will be refunded and this Contract shall become void unless extended in writing by mutual agreement.

K) UTILITY/ ELECTRIC SERVICE AVAILABILITY/SURCHARGE DISCLOSURE (check what applies)

()
 ()
 Buyer

()
 ()
 Seller

- The above subject property does/does not have utility electric service available on it.
- This property is subject to an electric, gas and/or water utility surcharge.
- The type of surcharge is _____
- The purpose of the surcharge is _____
- The amount of the surcharge is _____
- The surcharge is payable: () Monthly () Yearly; Other basis _____

L) GOVERNMENT APPROVALS CONTINGENCY

()
 ()
 Buyer

()
 ()
 Seller

This Contract is contingent upon the Buyer obtaining at his own expense, any and all governmental approvals and/or permits (if necessary) required to use the premises as _____.
 This contingency shall be deemed waived unless Buyer shall notify _____ in writing, by certified/registered mail, return receipt requested, post marked no later than _____ or by personal service by such date of the failure of this contingency. If Buyer so notifies, then this Contract shall be deemed cancelled, null and void and all deposits made hereunder shall be returned to Buyer.

If any of the above contingences are not met, as set forth above, this Contract shall be deemed null and void and all deposits returned to buyer except as provided in paragraph 13.

CERTIFICATION OF BUYER AND SELLER AND REAL ESTATE AGENT

We, the undersigned Seller(s) and Buyer(s) involved in this transaction do certify that the terms of the sales contract are true to the best of our knowledge and belief. All agreements entered into by any of the following parties are fully disclosed and attached to the sale contract. For the purpose of this Contract, signatures transmitted by facsimile shall have the same force and effect as original signatures.

[Signature] 4/23/17
 Seller Kurt Kuhlman Date

[Signature] _____
 Buyer Date

 Seller Date

 Buyer Date

[Signature] [Signature]
 Witnessed By:

[Signature]
 Witnessed By:

REQUIRED VA ADDENDUM

TO ACCOMPANY ALL CONTRACTS CALLING FOR VA LOANS

DATE: 4/23/17

TO BE ATTACHED TO AND BECOME A PART OF THE CONTRACT TO PURCHASE AND SELL THE FOLLOWING:

PROPERTY ADDRESS: 107 Akins Road
Berkshire NY 13736

DATE OF CONTRACT: 4/23/17

PURCHASER(S): Mark Johnson

SELLER(S): Kurt Kuhlman

IT IS EXPRESSLY AGREED THAT, NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CONTRACT, THE PURCHASER SHALL NOT INCUR ANY PENALTY BY FORFEITURE OF EARNST MONEY OR OTHERWISE BE OBLIGATED TO COMPLETE THE PURCHASE OF THE PROPERTY DESCRIBED HEREIN, IF THE CONTRACT PURCHASE PRICE OR COST EXCEEDS THE REASONABLE VALUE OF THE PROPERTY ESTABLISHED BY THE VETERANS ADMINISTRATION. THE PURCHASER SHALL, HOWEVER, HAVE THE PRIVILEGE AND OPTION OF PROCEEDING WITH THE CONSUMMATION OF THIS CONTRACT WITHOUT REGARD TO THE AMOUNT OF THE REASONABLE VALUE ESTABLISHED BY THE VETERANS ADMINISTRATION.

Purchasers: Mark Johnson 4/23/17
Mark Johnson Date

Sellers: Kurt Kuhlman 4/23/17
Kurt Kuhlman Date

Mary Demun 4/23/17
Mary Demun Date
Selling Broker/Agent

Jimmie S. Hinkle 4/23/17
Jimmie Hinkle Date
Listing Broker Agent